

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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|---|--|
| IN RE: |) Chapter 11 |
| ORION REFINING CORPORATION, |) Case No. 03-11483 (MFW) |
| <u>Debtor.</u> |) |
| FLUOR ENTERPRISES, INC., |) |
| Plaintiff, |) Adv. Proc. No. 04-52447 (MFW) |
| |) |
| ORION REFINING CORPORATION, CYPRESS ASSOCIATES, LLC as ORC DISTRIBUTION TRUST REPRESENTATIVE, |) [Parallel Contested Matter under Fed. R. Bankr. P. 9024 and Fed R. Bankr. P. 60(b)] |
| <u>Defendant.</u> |) |
| ORION REFINING CORPORATION, |) |
| Counter-Claimant, |) |
| |) |
| FLUOR ENTERPRISES, INC., |) |
| Counter-Defendant. |) |
| |) |

**CROSS-DESIGNATION OF ITEMS
TO BE INCLUDED IN RECORD ON APPEAL BY APPELLANT**

Appellant, Cypress Associates, LLC, as ORC Distribution Trust Representative, successor-in-interest to Orion Refining Corporation (“Appellant”), by its undersigned attorneys, hereby submits, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 8006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), its cross-designations of items to be included in the record on appeal of the Bankruptcy Court’s Order,

dated May 9, 2006 and entered by the Court on May 10, 2006 (D.I. 69), Opinion, dated May 9, 2006 and entered by the Court on May 10, 2006 (D.I. 68) and the Bankruptcy Court's Order, dated July 20, 2007 and entered by the Court on July 20, 2007 (D.I. 1912; A.D.I. 137).¹

CROSS-DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL

Appellant hereby cross-designates the following items to be included in the record on appeal:

¹ On July 30, 2007, Appellant filed the Motion Of Cypress Associates, LLC, As ORC Distribution Trust Representative, For An Order (I) Granting Reconsideration, In Part, Of The Court's Findings Of Fact, Opinion And Order, Each Dated July 20, 2007, And (II) Upon Reconsideration, (A) Vacating That Portion Of The Opinion And Order Authorizing Fluor Enterprises, Inc. To Recover Pre-Judgment Interest And (B) Granting Related Relief (Adv. D.I. 138; Bankr. D.I. 1913) (the “Reconsideration Motion”) in the above-captioned proceedings. Accordingly, Appellant believes that, pursuant to Bankruptcy Rule 8002(b), Cross-Appellant’s cross-appeal is ineffective. Bankruptcy Rule 8002(b) broadly provides that “[a] notice of appeal filed after announcement or entry of the judgment, order or decree but before disposition of any of the above motions [expressly including a motion to alter or amend the judgment under Bankruptcy Rule 9023] is ineffective to appeal from the judgment, order or decree, or part thereof specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding” and that “[a]ppellate review of an order disposing of any of the above motions, requires the party, in compliance with Rule 8001, to amend a previously filed notice of appeal.” Appellant believes that the Reconsideration Motion, which expressly invokes Bankruptcy Rule 9023, is a motion of the type specified in Bankruptcy Rule 8002(b) such that Cross-Appellant’s designations are premature. Nevertheless, Appellant has filed its Cross-Designations Of Items To Be Included In Record On Appeal out of an abundance of caution because, although Cross-Appellant’s Designation of Record and Statement of Issues on Appeal (D.I. 1927; A.D.I. 156) does not challenge the Bankruptcy Court’s Findings of Fact (D.I. 1910; A.D.I. 135) or Opinion Granting Fluor Enterprises, Inc.’s Motion for Relief from Previously Entered Critical Fire and Trade Vendor Orders (D.I. 1911; A.D.I. 136), Appellee has appealed from the Bankruptcy Court’s Order, dated July 20, 2007 and the cross-designated items may be relevant to any arguments that Cross-Appellant may make with respect to that Order or the Bankruptcy Court’s determination after trial (D.I. 1912; A.D.I. 137). Appellant reserves its right to file designations in support of its appeal at the appropriate time.

Records from Main Bankruptcy Case

| <u>TAB NO.</u> | <u>DOCKET NO.</u> | <u>DESCRIPTION OF PLEADING/EVIDENCE</u> |
|----------------|-------------------|---|
| 1 | 1 | Chapter 11 Voluntary Petition, filed 5/13/2003 |
| 2 | 229 | Order (WITH REVISIONS OF THE COURT) (A) Establishing Bidding Procedures In Connection With Sale of Substantially All of the Assets of the Debtor, Including Certain Buyer Protections, (B) Approving the Form and Manner of Notices, (C) Approving the Form of the Amended Asset Purchase Agreement, (D) Setting a Sale Hearing, and (E) Granting Related Relief, filed 6/12/2003 |
| 3 | 267 | Response to The Sale Motion and Proposed Order (A) Approving the Sale of Certain Assets of the Debtor Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. Section 363, (B) Authorizing the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts, (C) Authorizing the Rejection of Certain Unexpired Leases and Executory Contracts and (D) Granting Related Relief, filed 6/19/2003 |
| 4 | 269 | Objection to Notice of (I) Debtor's Request for Authority to Assume, Assign and Sell Certain Executory Contracts and Unexpired Leases, (II) Debtor's Proposed Cure Amounts and (III) Debtor's Request for Authority to Reject Certain Executory Contracts and Unexpired Leases Not Assumed and Assigned, filed 6/19/2003 |
| 5 | 336 | Order (A) Approving the Sale of Certain Assets of the Debtor Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 USCS Section 363, (B) Authorizing the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts, (C) Authorizing the Rejection of Certain Unexpired Leases and Executory Contracts and (D) Granting Related Relief, filed 6/26/2003 |
| 6 | 357 | Notice of Lien / Notice Under Section 546 of Perfection of Lien, filed 7/09/2003 |
| 7 | 372 | Transcript of Motions Hearing Held on June 26, 2003, filed 7/15/2003 |
| 8 | 582 | Motion to Allow Motion of Fluor Enterprises, Inc. for Allowance and Immediate Payment of Administrative Expense Claim, filed 10/03/2003 |
| 9 | 676 | Response to Motion of Fluor Enterprises, Inc. for Allowance and Immediate Payment of Administrative Expense Claim Filed by Fluor Enterprises, Inc., filed 10/30/2003 |

| <u>TAB NO.</u> | <u>DOCKET NO.</u> | <u>DESCRIPTION OF PLEADING/EVIDENCE</u> |
|----------------|-------------------|--|
| 10 | 677 | Response to Motion of Fluor Enterprises, Inc. for Allowance and Immediate Payment of Administrative Expense Claim Filed by Fluor Enterprises, Inc., filed 10/30/2003 |
| 11 | 680 | Supplemental Response to Debtor's Supplemental Response to Motion Of Flour Enterprises, Inc. For Allowance And Immediate Payment Of Administrative Expense Claim And Reservation Of Rights, filed 10/31/2003 |
| 12 | 825 | Limited Objection to Fluor Enterprises, Inc. To Motion For Order Authorizing (I) Retention And Disposal Of Certain Records And Files, And (II) Entry Into Agreements With Storage Facilities, filed 12/10/2003 |
| 13 | 1165 | Disclosure Statement Disclosure Statement To Accompany Plan Of Liquidation Of Orion Refining Corporation, filed 4/16/2004 |
| 14 | 1166 | Chapter 11 Plan of Reorganization Plan Of Liquidation Of Orion Refining Corporation, filed 4/16/2004 |
| 15 | 1198 | Motion to Allow Emergency Motion Of Fluor Enterprises, Inc. For Order Fixing Hearing Date, Shortening Notice And Establishing Date For Objections, filed 5/3/2004 |
| 16 | 1204 | Notice of Withdrawal Of Motion Of Fluor Enterprises, Inc. For An Order Modifying The Automatic Stay Pursuant To 11 U.S.C. Section 363(d), filed 5/04/2004 |
| 17 | 1206 | Motion for Relief from Stay Motion Of Fluor Enterprises, Inc. For An Order Modifying The Automatic Stay Pursuant To 11 U.S.C. Section 362(d), filed 5/03/2004 |
| 18 | 1212 | Objection to Disclosure Statement to Accompany Plan of Liquidation of Orion Refining Corporation, filed 5/04/2004 |
| 19 | 1231 | Amended Disclosure Statement Notice Of Filing Of Amended Disclosure Statement To Accompany Amended Plan Of Liquidation Of Orion Refining Corporation, filed 5/10/2004 |
| 20 | 1232 | Amended Plan, filed 5/10/2004 |
| 21 | 1236 | Order Granting Motion of Fluor Enterprises, Inc. to Modify the Automatic Stay, filed 5/12/2004 |
| 22 | 1238 | Order Approving Disclosure Statement to Accompany Amended Plan of Liquidation of Orion Refining Corporation, Debtor, filed 5/12/2004 |
| 23 | 1241 | Disclosure Statement Disclosure Statement to Accompany Amended Plan of Liquidation of Orion Refining Corporation, filed 5/12/2004 |
| 24 | 1242 | Amended Plan, filed 5/12/2004 |

| <u>TAB NO.</u> | <u>DOCKET NO.</u> | <u>DESCRIPTION OF PLEADING/EVIDENCE</u> |
|----------------|-------------------|---|
| 25 | 1311 | Limited Objection to Amended Plan of Liquidation of Orion Refining Corporation, filed 6/17/2004 |
| 26 | 1334 | Affidavit Declaration Of Steven L. Victor, Chief Restructuring Officer Of Orion Refining Corporation, In Support Of Amended Plan Of Liquidation Of Orion Refining Corporation, Dated May 12, 2004, filed 06/23/2004 |
| 27 | 1338 | Debtor's Memorandum Of Law (A) In Support Of Confirmation Of Amended Plan Of Liquidation Of Orion Refining Corporation, Dated May 12, 2004, And (B) In Response To Objections Thereto, filed 06/24/2004 |
| 28 | 1340 | Exhibit (EXHIBIT C) Debtor's Memorandum Of Law (A) In Support Of Confirmation Of Amended Plan Of Liquidation Of Orion Refining Corporation, Dated May 12, 2004, And (B) In Response To Objections Thereto, filed 06/24/2004 |
| 29 | 1361 | Findings of Fact and Conclusions of Law and Order Confirming Amended Plan of Liquidation of Orion Refining Corporation, Dated May 12, 2004, filed 07/02/2004 |
| 30 | 1368 | Findings of Fact and Conclusions of Law Notice of (1) Entry of Confirmation Order (2) Effective Date of Amended Plan of Liquidation of Orion Refining Corporation Dated May 12, 2004, As Modified, (3) Certain Bar Dates for (A) Filing Administrative Claims, (B) Filing Fee Claims, And (C) Filing Rejection Damage Claims And (4) Affected Executory Contracts And Unexpired Leases, filed 07/08/2004 |
| 31 | 1374 | Chapter 11 Plan of Reorganization Notice Of Filing Of Conformed Version Of Amended Plan Of Liquidation Of Orion Refining Corporation, Dated May 12, 2004, As Effective, filed 07/08/2004 |
| 32 | 1929 | Reply In Further Support Of Motion Of Cypress Associates, LLC, As ORC Distribution Trust Representative, For An Order (I) Granting Reconsideration, In Part, Of The Court's Findings Of Fact, Opinion And Order, Each Dated July 20, 2007, And (II) Upon Reconsideration, (A) Vacating That Portion Of The Opinion And Order Authorizing Fluor Enterprises, Inc. To Recover Pre-Judgment Interest And (B) Granting Related Relief, filed 08/22/07 |

Trial Exhibits

| <u>TRIAL EXHIBIT NO.</u> | <u>DATE OF EXHIBIT</u> | <u>DESCRIPTION OF PLEADING/EVIDENCE</u> |
|---------------------------------|-------------------------------|--|
| JTX 1 | 5/12/2003 - 6/9/2003 | Constable Notes |
| JTX 3 | 5/12/2003 | Statement of Claim and Privilege by Fluor Enterprises, Inc. |
| JTX 4 | 6/18/2003 | Supplemental Statement of Claim and Privilege by Fluor Enterprises, Inc. |
| JTX 6 | 5/14/2003 | Orion Update Presentation |
| JTX 7 | 5/20/2003 | Orion Update Presentation |
| JTX 9 | 5/10/2003 | D. Stinger Email |
| JTX 10 | 5/13/2003 | H. Pozzo Email, attaching Orion Update Presentation |
| JTX 12 | 5/14/2003 | Penn Notes |
| JTX 13 | 5/16/2003 | Penn Notes |
| JTX 14 | 5/20/2003 | Orion Update Presentation with Penn notes |
| JTX 15 | Undated | Stover Notes |
| JTX 16 | 5/16/2003 | Pozzo Notes |
| JTX 17 | 5/9/2003 | S. C. Johnson Email |
| JTX 18 | 5/10/2003 | S. C. Johnson Email |
| JTX 20 | 5/12/2003 | J. Tillery Email |
| JTX 21 | 5/13/2003 | E. Bluth Email |
| JTX 23 | 5/13/2003 | S. C. Johnson Email |
| JTX 24 | 5/13/2003 | S. C. Johnson Email |
| JTX 25 | 7/13/2004 | Valerie Krehmeier Affidavit |
| JTX 26 | Undated | Fluor/PSC Payables Analysis |
| JTX 29 | 5/15/2003 | Pozzo Notes; Orion Update Presentation |
| JTX 30 | 5/16/2003 | J. Reynolds Email; Pozzo Notes |
| JTX 32 | 5/16/2003 | Pozzo Notes |
| JTX 34 | 5/20/2003 | Pozzo Notes |
| JTX 35 | 5/23/2003 | A. Schexnaydre Email; Pozzo Notes |

| <u>TRIAL EXHIBIT NO.</u> | <u>DATE OF EXHIBIT</u> | <u>DESCRIPTION OF PLEADING/EVIDENCE</u> |
|--------------------------|------------------------|---|
| JTX 41 | 10/7/2003 | V. Krehmeier Email with attachments |
| JTX 43 | 5/13/2003 | Debtor's Motion for Authority to Pay Certain Fixed Liquidated and Undisputed Prepetition Claims of Fire Vendors, Mechanics and Materialmen (D.I. 14) |
| JTX 45 | 5/15/2003 | Order Authorizing The Debtor To Pay Certain Fixed, Liquidated And Undisputed Prepetition Claims Of Fire Vendors And Mechanics And Materialmen Pursuant To 11 U.S.C. & 105(a) And 363(b) [Re: D.I. 14] (D.I. 38) |
| JTX 49 | 6/24/2004 | Confirmation Hearing Transcript |
| JTX 52 | 11/21/2006 | Affidavit of Steven L. Victor (D.I. 1839) |
| JTX 56 | 5/15/2003 | M. Stevens Email |
| JTX 58 | 3/2/2003 | Accounts Receivable Services Agreement |
| JTX 59 | | Wire Transfer Confirmations |
| JTX 60 | 5/19/2003 | K. Scallon Email with attachment |
| JTX 62 | Various | Cost Reports |
| JTX 68 | 5/20/2003 | Letter from F. Rusich, Jr. to S. Victor |
| JTX 71 | 9/4/2003 | Orion Pre-Petition Costs Summary |
| JTX 76 | 6/10/2003 | Orion Update Status Presentation |
| JTX 83 | 5/20/2002 | Orion Refining Corporation Master Service Agreement Contract Number: 02-1257 |
| JTX 84 | 2/3/2003 | Letter from F. Rusich to T. Landry |
| JTX 85 | 2/4/2003 | Letter between Orion Refining Corp. and PSC Industrial Outsourcing, Inc. |
| JTX 87 | 6/11/2003 | E. Bluth Email |
| JTX 88 | 7/19/2003 | Orion Wrap-Up Meeting Notes |
| JTX 89 | 9/8/2003 | Letter from J. Reynolds to E. Schwartz |
| JTX 90 | 10/1/2003 | Letter from E. Schwartz to J. Reynolds |
| JTX 91 | 5/15/2003 | R. Rayzor Email |
| JTX 92 | 6/5/2003 | Transcript of Hearing Before Honorable Mary F. Walrath |
| JTX 93 | 5/13/2003 | Purchase and Sale Agreement Among Orion Refining Corporation, Valero Energy Corporation and Valero Refining-New Orleans, L.L.C. |
| JTX 95 | 06/18/2003 | Letter from S. Victor to Power Logic (Exhibit A) |

| <u>TRIAL EXHIBIT NO.</u> | <u>DATE OF EXHIBIT</u> | <u>DESCRIPTION OF PLEADING/EVIDENCE</u> |
|--------------------------|------------------------|--|
| JTX 96 | 04/06/2007 | Plaintiff's Response to Defendant's Second Set of Interrogatories Directed to Plaintiff |
| F2 | 06/04/2004 | Fluor Fire Repair Summary |

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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Dated: August 30, 2007

1223034.3

CERTIFICATE OF SERVICE

I, Thomas W. Briggs, Jr., certify that I am not less than 18 years of age, and that service of the **Cross-Designations Of Items To Be Included In Record On Appeal** was caused to be made on August 30, 2007 upon those parties identified below in the manner indicated.

Under penalty of perjury, I declare that the foregoing is true and correct.

Dated: August 30, 2007

/s/ Thomas W. Briggs, Jr.

Thomas W. Briggs, Jr. (No. 4076)

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**APPEAL TRANSMITTAL SHEET**Case Number: _____ BK AP

If AP, related BK Case Number: _____

Title of OrderAppealed:

Docket Number: _____

Date Entered: _____

Item Transmitted: Notice of Appeal Motion for Leave to Appeal
 Amended Notice of Appeal Cross Appeal
 Docket Number: _____ Date Filed: _____

*Appellant/Cross Appellant:

*Appellee/Cross Appellee

Counsel for Appellant:

Counsel for Appellee:

**If additional room is needed, please attach a separate sheet.*Filing Fee paid? Yes NoIFP Motion Filed by Appellant? Yes NoHave Additional Appeals to the Same Order been Filed? Yes NoIf so, has District Court assigned a Civil Action Number? Yes No Civil Action # _____Additional Notes:

DateBy: _____
Deputy ClerkBankruptcy Court Appeal (BAP) Number: _____
7/6/06**FOR USE BY U.S. BANKRUPTCY COURT**